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REMARKS

The Office Action mailed August 12, 2004, and made final, has been carefully reviewed and the foregoing amendment has been made in consequence thereof.

Claims 1-20 are now pending in this application. Claims 1-9, 11, 14-16, 19, and 20 stand rejected. Claims 10, 12, 13, 17, and 18 are objected to.

Applicant wishes to thank the Examiner for the courtesies extended in a telephonic interview on October 13, 2004 in which both the Unger and Schmidt references were discussed in view of the pending claims. During the interview, Applicant proposed changes to the Claims and the Examiner informed Applicants that making the proposed changes or similar changes would be taken under consideration by the Examiner. No agreement was reached as to Claims 1 and 11, however, an agreement that Claim 6 is patentable over the cited art was reached.

The rejection of Claims 1-9, 11, 14-16, 19, and 20 under 35 U.S.C. § 103(a) as being unpatentable over Unger in view of Schmidt is respectfully traversed.

Unger describes a damper door (42) that closes against a liner (24) of a refrigerator door (13) immediately adjacent to a cylindrical projection (37). Consequently the damper door is, in effect, along the outer surface of insulation (19) in the refrigerator door. Further, since the refrigerator door itself is insulated, it functions efficiently to prevent heat transfer through a passage that connects the projection to the freezer compartment. Because of the temperature difference of the passage between the cold side and the non-cold side of the damper door, there is a tendency for the damper door to be frozen in the closed position. In order to avoid malfunction caused by such freezing, an electric heater (69) is mounted on the liner around the opening for the passage and adjacent to the damper door. This heater is, therefore, against the door along the inner side of the liner and provides sufficient heat to the damper door to release the damper door when it becomes frozen. In the event that the damper door is frozen in the closed position, the

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heater promptly causes melting and allows the door to open for proper dispensing operation. Notably, the electric heater described by Unger is fixedly secured along the liner of the refrigerator door and is not positioned within the damper door. Moreover, Unger does not describe or even suggest that the electric heater directs heat into only the periphery of the door nor does Unger describe or suggest placing insulation between the heater and the central region of the front layer.

Schmidt describes with reference to FIG. 7, a heater (88) illustrated in detail. The heater is of laminated construction and includes a pair of laminated plastic sheets (90). The sheets have a generally rectangular main portion (91), of a size and shape corresponding to a closure front wall (66), connected at an upper corner to an elongate, generally L-shaped extending portion (92). Silkscreened between the plastic sheets is a track (94) of conductive, resistance ink traced thereon in a serpentine configuration. A silver blend of significantly lower resistance is screened on the trailing portion (92), or areas in which heat is not required. A termination stabilizer (96) is secured to the trailer distal end (98) for connection of the opposite ends (100 and 102) of the track (94) to a power source. Column 5, lines 5-19. Schmidt also describes that "Thus, there is disclosed herein, in accordance with the invention, a closure for use with an ice dispensing apparatus which includes a heater for preventing external condensation." Column 5, lines 36-39. Notably, the heater is channeled along the plastic sheets in a serpentine configuration, and is not positioned along the peripheral region of the plastic sheets.

Applicant respectfully submits that a prima facie case of obviousness has not been established. As explained by the Federal Circuit, "to establish obviousness based on a combination of the elements disclosed in the prior art, there must be some motivation, suggestion or teaching of the desirability of making the specific combination that was made by the applicant." *In re Kotzab*, 54 USPQ2d 1308, 1316 (Fed. Cir. 2000). MPEP 2143.01.

Moreover, the Federal Circuit has determined that:

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[I]t is impermissible to use the claimed invention as an instruction manual or "template" to piece together the teachings of the prior art so that the claimed invention is rendered obvious. This court has previously stated that "[o]ne cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention."

*In re Fluch*, 23 USPQ2d 1780, 1784 (Fed. Cir. 1992). Further, under Section 103, "it is impermissible . . . to pick and choose from any one reference only so much of it as will support a given position, to the exclusion of other parts necessary to the full appreciation of what such reference fairly suggests to one of ordinary skill in the art." *In re Wesslau*, 147 USPQ 391, 393 (CCPA 1965). Rather, there must be some suggestion, outside of Applicant's disclosure, in the prior art to combine such inferences, and a reasonable expectation of success must be both found in the prior art, and not based on Applicant's disclosure. *In re Vaeck*, 20 U.S.P.Q.2d 1436 (Fed. Cir. 1991). Applicant respectfully submits that the Section 103 rejection of the presently pending claims is not a proper rejection. As is well established, obviousness cannot be established by combining the teachings of the cited art to produce the claimed invention, absent some teaching, suggestion, or incentive supporting the combination. Neither Unger nor Schmidt, considered alone or in combination, describe or suggest the claimed combination. Additionally, neither Unger nor Schmidt provide a reasonable expectation of success. Furthermore, in contrast to the assertion within the Office Action, Applicant respectfully submits that it would not be obvious to one skilled in the art to combine Unger with Schmidt because there is no motivation to combine the references suggested in the art. Additionally, the Examiner has not pointed to any prior art that teaches or suggests to combine the disclosures, other than Applicant's own teaching. Rather, only the conclusory statement that "[i]t would have been obvious to one of ordinary skill in the art at the time of applicant's invention from the teaching of Schmidt to modify the ice dispensing door of Unger by placing the heater in the door to improve the efficiency of the deicing process by limiting heat which enters the ice storage enclosure (by not heating the enclosure)" suggests combining the disclosures. Applicant respectfully traverses this conclusory assertion.

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In the present case, neither a suggestion nor motivation to modify the cited art, nor any reasonable expectation of success has been shown in the cited prior art. Specifically, no teaching, or suggestion has been shown to modify the dispenser system described by Unger to include the heater described by Schmidt. Rather as explained below Unger and Schmidt teach away from the claimed invention.

Specifically, the combination of Unger and Schmidt does not teach a method including the steps of applying direct heat to only a peripheral region of a rear surface of a front layer of the door at a rate sufficient to heat the peripheral region of the door to a point above zero degrees Centigrade but not sufficient to significantly heat a central region of the front layer, and conducting heat from the peripheral region to an outer surface of the front layer at a rate sufficient to heat the outer surface to a temperature above a dew point of ambient air so as to prevent condensation on the outer surface. Specifically, Unger does not describe or suggest applying direct heat to only a peripheral region of the door. Rather, Unger describes applying heat to a damper door from a heating element coupled to a refrigerator liner. Moreover, Unger is silent with respect to condensation, which clearly teaches away from conducting heat from the peripheral region to an outer surface of the front layer at a rate sufficient to heat the outer surface to a temperature above a dew point of ambient air so as to prevent condensation on the outer surface. And Schmidt describes that silkscreened between plastic sheets is a track of conductive, resistance ink traced thereon in a serpentine configuration, which clearly teaches away from applying direct heat to only a peripheral region of a rear surface of a front layer of the door at a rate sufficient to heat the peripheral region of the door to a point above zero degrees Centigrade but not sufficient to significantly heat a central region of the front layer. Additionally, because Unger describes the heater promptly causes melting and allows the door to open for proper dispensing operation, and Schmidt describes a closure for use with an ice dispensing apparatus which includes a heater for preventing external condensation, Unger and Schmidt teach away from each other. Therefore, Applicant respectfully submits that no motivation nor teaching for the modifications can be found within either Unger or Schmidt.

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If art "teaches away" from a claimed invention, such a teaching supports the nonobviousness of the invention. *U.S. v. Adams*, 148 USPQ 479 (1966); *Gillette Co. v. S.C. Johnson & Son, Inc.*, 16 USPQ2d 1923, 1927 (Fed. Cir. 1990). In light of this standard, it is respectfully submitted that the cited art, as a whole, is not suggestive of the presently claimed invention.

As the Federal Circuit has recognized, obviousness is not established merely by combining references having different individual elements of pending claims. *Ex parte Levingood*, 28 U.S.P.Q.2d 1300 (Bd. Pat. App. & Inter. 1993). MPEP 2143.01. Rather, there must be some suggestion, outside of Applicant's disclosure, in the prior art to combine such references, and a reasonable expectation of success must be both found in the prior art, and not based on Applicant's disclosure. *In re Vaeck*, 20 U.S.P.Q.2d 1436 (Fed. Cir. 1991). In the present case, neither a suggestion nor motivation to combine the prior art disclosures, nor any reasonable expectation of success has been shown.

Furthermore, it is impermissible to use the claimed invention as an instruction manual or "template" to piece together the teachings of the cited art so that the claimed invention is rendered obvious. Specifically, one cannot use hindsight reconstruction to pick and choose among isolated disclosures in the art to deprecate the claimed invention. Further, it is impermissible to pick and choose from any one reference only so much of it as will support a given position, to the exclusion of other parts necessary to the full appreciation of what such reference fairly suggests to one of ordinary skill in the art. Obviousness cannot be established by merely suggesting that it would have been obvious to one of ordinary skill in the art to modify Unger according to the teachings of Schmidt. More specifically, as is well established, obviousness cannot be established by combining the teachings of the cited art to produce the claimed invention absent some teaching, suggestion, or incentive supporting the combination. Neither Unger nor Schmidt, considered alone or in combination, describe or suggest the claimed combination. Rather, the present Section 103 rejection appears to be based on a combination of

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teachings selected from multiple patents in an attempt to arrive at the claimed invention. Specifically, Unger is cited for teaching of heating a periphery of an ice dispensing using a looped electric heater and Schmidt is cited for its teaching of placing a heater into an ice dispensing door. Since there is no teaching or suggestion in the cited art of the claimed combination, the Section 103 rejection appears to be based on a hindsight reconstruction in which isolated disclosures have been picked and chosen in an attempt to deprecate the present invention. Of course, such a combination is impermissible, and for this reason alone, Applicant respectfully requests that the Section 103 rejection Claims 1-9, 11, 14-16, 19, and 20 be withdrawn.

Further, and to the extent understood, neither Unger nor Schmidt, alone or in combination, describe or suggest the claimed combination, and as such, the presently pending claims are patentably distinguishable from the cited combination. Specifically, Claim 1 recites a method including "applying direct heat with a heater to only a peripheral region of a rear surface of a front layer of the door at a rate sufficient to heat the peripheral region of the door to a point above zero degrees Centigrade but not sufficient to significantly heat a central region of the front layer; and conducting heat from the peripheral region to an outer surface of the front layer at a rate sufficient to heat the outer surface to a temperature above a dew point of ambient air so as to prevent condensation on the outer surface; and insulating the door between the heater and the central region of the front layer".

Neither Unger nor Schmidt, considered alone or in combination, describe or suggest a method including applying direct heat to only a peripheral region of a rear surface of a front layer of the door at a rate sufficient to heat the peripheral region of the door to a point above zero degrees Centigrade but not sufficient to significantly heat a central region of the front layer, and conducting heat from the peripheral region to an outer surface of the front layer at a rate sufficient to heat the outer surface to a temperature above a dew point of ambient air so as to prevent condensation on the outer surface. Moreover, neither Unger nor Schmidt, considered

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alone or in combination, describe or suggest insulating the door between the heater and the central region of the front layer. Rather, Unger describes applying heat to a damper door from a heating element coupled to a refrigerator liner to promptly cause melting and allowing a door to open for a proper dispensing operation, and Schmidt describes a closure for use with an ice dispensing apparatus which includes a heater channeled along the closure in a serpentine configuration.

For the reasons set forth above, Claim 1 is submitted to be patentable over Unger in view of Schmidt.

Claims 2-5 depend from independent Claim 1. When the recitations of Claims 2-5 are considered in combination with the recitations of Claim 1, Applicant submits that dependent Claims 2-5 likewise are patentable over Unger in view of Schmidt.

Claim 6 recites a method including "placing a heater element in heat transfer communication with and rearward of only a peripheral region of a front layer of the door; placing insulation between the heater and a central region of the front layer; and connecting the heater element with a source of energy within the dispenser but external to the door".

Neither Unger nor Schmidt, considered alone or in combination, describe or suggest a method including placing a heater element in heat transfer communication with and rearward of only a peripheral region of a front layer of the door, placing insulation between the heater and a central region of the front layer, and connecting the heater element with a source of energy within the dispenser but external to the door. More specifically, neither Unger nor Schmidt, considered alone or in combination, describe or suggest placing a heater element in heat transfer communication with and rearward of only a peripheral region of a front layer of the door, and placing insulation between the heater and a central region of the front layer. Rather, Unger describes applying heat to a damper door from a heating element coupled to a refrigerator liner to promptly cause melting and allowing a door to open for a proper dispensing operation, and

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Schmidt describes a closure for use with an ice dispensing apparatus which includes a heater channeled along the closure in a serpentine configuration.

For the reasons set forth above, Claim 6 is submitted to be patentable over Unger in view of Schmidt.

Claims 7-9 depend from independent Claim 6. When the recitations of Claims 7-9 are considered in combination with the recitations of Claim 6, Applicant submits that dependent Claims 7-9 likewise are patentable over Unger in view of Schmidt.

Claim 11 recites a heated dispenser outlet door, wherein the door includes "a front layer having a peripheral region and a central region; a rear layer; an insulation layer between said front and rear layers; a perimeter heater disposed between said front layer and said rear layer in heat direct transfer communication with only the peripheral region of said front layer and spaced from said central region, so as to direct heat from said heater into only said peripheral region; and insulation positioned between said perimeter heater and said central region of said front layer".

Neither Unger nor Schmidt, considered alone or in combination, describe or suggest a door including a front layer having a peripheral region and a central region, a rear layer, a perimeter heater disposed between the front layer and the rear layer in heat direct transfer communication with only the peripheral region of the front layer and spaced from the central region, so as to direct heat from the heater into only the peripheral region, and insulation positioned between said perimeter heater and said central region of said front layer. More specifically, neither Unger nor Schmidt, considered alone or in combination, describe or suggest insulation positioned between said perimeter heater and said central region of said front layer. Rather, Unger describes applying heat to a damper door from a heating element coupled to a refrigerator liner to promptly cause melting and allowing a door to open for a proper dispensing

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operation, and Schmidt describes a closure for use with an ice dispensing apparatus which includes a heater channeled along the closure in a serpentine configuration.

For the reasons set forth above, Claim 11 is submitted to be patentable over Unger in view of Schmidt.

Claims 14-16, 19, and 20 depend from independent Claim 11. When the recitations of Claims 14-16, 19, and 20 are considered in combination with the recitations of Claim 11, Applicant submits that dependent Claims 14-16, 19, and 20 likewise are patentable over Unger in view of Schmidt.

For the reasons set forth above, Applicant respectfully requests that the Section 103 rejection of Claims 1-9, 11, 14-16, 19, and 20 be withdrawn.

Claims 10, 12, 13, 17, and 18 are objected to as being dependent upon a rejected base claim. Applicant respectfully submits that the respective base claims are patentable and request the rejection of Claims 10, 12, 13, 17, and 18 be withdrawn.

In view of the foregoing amendments and remarks, all the claims now active in this application are believed to be in condition for allowance. Reconsideration and favorable action is respectfully solicited.

Respectfully Submitted,

  
Thomas M. Fisher.  
Registration No. 47,564  
ARMSTRONG TEASDALE LLP  
One Metropolitan Square, Suite 2600  
St. Louis, Missouri 63102-2740  
(314) 621-5070

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